



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Angus Fire Armour Corporation  
**File:** B-237211.2  
**Date:** January 18, 1990

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### DIGEST

Contracting officer properly found responsive bid which failed to acknowledge receipt of a solicitation amendment that forwarded copies of drawings which were referenced in previously-acknowledged amendments.

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### DECISION

Angus Fire Armour Corporation protests the proposed award of a contract to R.B. Pump, Inc., under invitation for bids (IFB) No. DAAK01-89-B-0025 issued by the Department of the Army for the supply of tactical water distribution systems.<sup>1/</sup>

We deny the protest.

R.B. Pump submitted the apparent low bid in the amount of \$9,070,000 and Angus's bid of \$9,791,382 was the second low bid. The Army, however, had no record of timely receiving R.B. Pump's acknowledgment that it had received the final amendment to the solicitation, number 0009. Angus contends that since R.B. Pump failed to acknowledge receipt of amendment 0009 prior to bid opening its bid was nonresponsive and it would be improper for the Army to accept it.

One component of the water distribution system is a "flaking box" in which hose is stored. The solicitation as issued included a drawing for a flaking box which would accommodate one 500-foot hose. As part of amendment 0004, however, the Army transmitted to bidders an "up to date," amended copy of a military specification which indicated that the flaking

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<sup>1/</sup> We recently denied a protest by the fourth low bidder that all lower bids were nonresponsive for a reason unrelated to the instant protest. Engineered Air Sys., Inc., B-237211, Dec. 26, 1989, 89-2 CPD ¶ \_\_\_\_.

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box had been enlarged to accommodate two 500-foot lengths of hose and which deleted the drawing included in the solicitation and substituted a different one, "D13227E9787." This change was noted by several prospective bidders, including the protester, who asked that the Army clarify its requirements. The Army reproduced Angus' inquiry in amendment 0006 as part of a list of potential bidders' questions, with the answer: "D13227E9787 is the correct drawing number for the larger flaking box." In addition, in response to another inquiry, the Army also advised in amendment 0006: ". . . 128 hose assemblies (500 feet each) and 64 flaking boxes (DWG. 13227E9787) are required. The hoses are packed 2 hose assemblies per box."

Drawing 13227E9787 in turn referred to a more detailed drawing 13228E3297. The Army forwarded copies of the latter drawing to potential bidders by amendment 0008. Included with that amendment, however, was only the first of five sheets (aperture cards) which compose drawing 13228E3297. The complete set of all five aperture cards composing drawing 13228E3297 was forwarded to potential bidders by amendment 0009. It was this amendment which R.B. Pump failed to timely acknowledge.

Angus contends that the drawings included in amendment 0009 were necessary to ascertain the requirements for constructing the flaking boxes. In general, Angus contends that the drawings furnished with amendments 0006 and 0008 did not depict the type of material required to construct the boxes; the detailed dimensions of the boxes or a new, more expensive rivet, used to fasten the box, changes which Angus alleges increased the price of the boxes by approximately \$45,000.

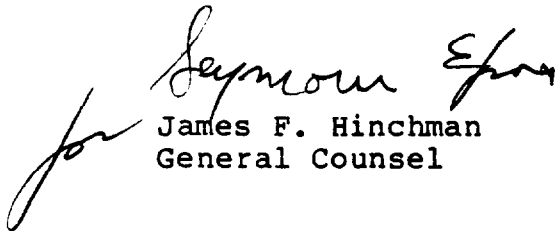
As a general proposition, a bidder's failure to acknowledge a material amendment to an IFB renders its bid nonresponsive. Star Brite Constr. Co., Inc., B-228522, Jan. 11, 1988, 88-1 CPD ¶ 17. This is true because without acknowledgment the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment. Id. An amendment is material, however, only if it would have more than a trivial impact on the price, quantity, quality, delivery or the relative standing of the bidders. See Federal Acquisition Regulation (FAR) § 14.405 (FAC 84-12); Star Brite Constr. Co., Inc., B-228522, supra. An amendment is not material where it does not impose any legal obligations on the bidder different from those imposed by the original solicitation or previous and acknowledged amendments. See Maintenance Pace Setters, Inc., B-213595, Apr. 23, 1984, 84-1 CPD ¶ 457. An amendment which merely clarifies an existing requirement,

therefore, is not material, and the failure to acknowledge it may be waived and the bid accepted. Head Inc., 68 Comp. Gen. 198 (1989), 89-1 CPD ¶ 82; request for reconsideration denied, May 16, 1989, 89-1 CPD ¶ 461.

We find that amendment 0009 did not impose any significant legal obligations that differed from those already required in the solicitation as amended through amendment 0008. Amendments 0006 and 0008 informed bidders that the flaking boxes were: (1) to be increased in size to accommodate two 500-foot hoses, and (2) to be made in accordance with drawing 13227E9787 which in turn referred to drawing 13228E3297.

The protester does not dispute that the governing drawings were referred to in the earlier amendments, but argues that until the full set of aperture cards was supplied in amendment 0009 the detailed information needed to manufacture the flaking boxes was not available. We view the information contained in amendment 009 as clarifications of the government specifications acknowledged in previous amendments, and not, as Angus suggests, the imposition of material, new and separate legal obligations. R.B. Pump, in acknowledging amendments 0006 and 0008, legally obligated itself to deliver end items which contained flaking boxes built in accordance with drawing 13228E3297, notwithstanding its failure to timely acknowledge amendment 0009. Since amendment 0009 was not a material amendment, R.B. Pump's failure to acknowledge it was a minor informality which the agency may waive.

Accordingly, the protest is denied.

for  
James F. Hinchman  
General Counsel